

Dale Vaughan - Re: EWR Comment Letter

From: "USWA USWA" <uswa@WDC.USDA.GOV>
To: <Karla.Pineda@botcc.com>
Date: 10/4/01 6:11 PM
Subject: Re: EWR Comment Letter

Karla,

I received your email and the attachment did not open properly, could you resend it at your convenience.

Please extend our thanks to Mr. Dutterer for commenting on our proposed rule. We appreciate him taking time out of his busy schedule to provide these comments to us.

Sincerely,
Roger Hinkle

>>> "Karla Pineda" <Karla.Pineda@botcc.com> 10/04/01 17:34 PM >>>

October 4, 2001

Mr. Roger Hinkle
Chief Licensing Authority Branch
Warehouse and Inventory Division-
Commodity Operations - USDA
Mail Stop -0553 Room 5968 S
1400 Independence Avenue, SW
Washington, DC 20250-0553

Re: (66 FR 46310; September 4, 2001)

Dear Mr. Hinkle:

On behalf of the Board of Trade Clearing Corporation ("Clearing Corporation"), I would like to extend our congratulations on the significant progress that the United States Department of Agriculture ("Department") has made with regard to electronic documentation.

Based on a tradition of independence, integrity, and innovation, the Clearing Corporation has established itself as the model for the majority of the world's clearinghouses. It has an unequalled reputation for financial integrity and proactive systems development. At the same time, the Clearing Corporation maintains the lowest clearing costs in the industry. Over three decades ago, the Clearing Corporation recognized the need for paperless clearing and developed what was the industry's first cost-effective, on-line system for entering, editing, and distributing trade information. To this day, the Clearing Corporation is an industry leader with respect to developing, implementing, and administering state-of-the-art technology and systems.

The Clearing Corporation performs clearing and settlement functions for all futures and futures options trades executed on or through the facilities of the Chicago Board of Trade "CBOT"), the MidAmerica Commodity Exchange ("MidAm"), and The Merchants' Exchange of St. Louis. Such trades include the vast majority of futures and futures options contracts on domestic agricultural products executed on the markets located in the United States. The Clearing Corporation, which has been guaranteeing the financial integrity of these futures markets for more than 75 years, is the preeminent clearinghouse for agricultural derivatives in the world and is "AAA" rated by Standard & Poor's Corporation. The Clearing Corporation's "AAA" rating is the result of its: significant and highly liquid capital base, approximately \$180 million; \$100 million default insurance; and \$200 million line of credit.

In addition to clearing and settling futures and futures options

contracts, the Clearing Corporation facilitates the physical settlements on futures contracts. Specifically, Clearing Corporation systems provide the means for the holder of a short futures position to invoice his intention to deliver. Clearing Corporation systems then assign the delivery to the holder of the oldest corresponding long futures contract. The Clearing Corporation's systems process numerous delivery instruments pursuant to this process including: federal warehouse receipts, shipping certificates, and barge placement certificates.

The Clearing Corporation appreciates this opportunity to comment on the proposed regulations. We support most of the provisions of the proposal and look forward to their rapid implementation. We would, though, like to point out the following issues and concerns:

Insurance requirements for providers. The Clearing Corporation notes that the minimum requirements are specific and apparently inflexible. For example, the required maximum deductible insurance levels may not allow well-capitalized Providers, such as the Clearing Corporation potentially, to obtain insurance more economically. Moreover, well-capitalized companies, such as the Clearing Corporation, are in a position to cover the risk at issue without insurance. Thus, the insurance requirements proposed by the Department would impose an unnecessary layer of cost on the process.

Transition. The Clearing Corporation recommends that the Department be more explicit in how it will handle issues that may arise from the transition of warehouses to electronic issuance.

The co-existence of both paper and electronic versions of warehouse receipts raises practical and legal concerns. At §735.302(a)(4) the Department would require such warehouse initially to issue all receipts in electronic form; however, the proposed regulations state at §735.302(b)(8) "A depositor or current EWR holder may request a paper warehouse receipt in lieu of an EWR." The Clearing Corporation is concerned that if such a process is not defined more specifically, the above regulations might inadvertently allow for two documents (one electronic and one paper) for the same underlying commodity. This would be extremely problematic if the two documents were transferred to two separate holders in interest.

Provider Agreements. The Department is proposing to use the individual agreements with Providers as the basis of the relationship between Providers and the Department. The proposed forms of agreements are essentially one-sided and, therefore, may invite a level of arbitrariness in administration that will threaten the commercial viability of being a Provider. Additionally, a Provider may be subject to other regulatory oversight obviating the need for some of the more strict provisions of the draft Provider Agreements relating to the provided services and related systems. The Clearing Corporation suggests that a better approach would be for the Department to simply list the types of provisions that would be contained in a Provider agreement but leave the specific terms open to negotiation based on a Provider's particular circumstances.

Fees. The Department's proposal that it be given the right to approve all fees charged by a Provider would put any business planning at risk. A Provider would not be able to assess the profitability of any services or products in advance of knowing what fees are acceptable to the Department. The Clearing Corporation encourages the Department to allow the free market to work in this instance to price the services appropriately.

The Clearing Corporation believes that electronic documentation will provide important enhancements as well as cost reductions to the grain storing and handling industries. The Clearing Corporation is seriously considering leveraging its existing processes and technology systems to offer the services contemplated by the proposed regulations. If the business case merits such a venture, the Clearing Corporation looks forward to working with the Department to accomplish the goal of making U.S. agriculture more competitive through efficiencies and cost savings provided by today's technology and information systems.

Respectfully submitted,

Dennis A. Dutterer